

Transcript: “Podcast: IG Horowitz & Deputy IG Storch Discuss Report on DEA’s Confidential Source Program” – July 2015

Rob: Welcome to the latest podcast from the Department of Justice Office of the Inspector General. My name is Rob Storch, and I am the Deputy Inspector General for the U.S. Department of Justice.

I’m here today with DOJ Inspector General Michael Horowitz, and today we’re going to discuss our office’s new report on the Drug Enforcement Administration’s Confidential Source program.

Rob: The report covers a lot, so let’s get right to it.

- Today’s report found that the policies that govern the DEA’s Confidential Source Program, are not fully consistent with guidance provided by the Attorney General.
- Could you explain that for our listeners in a little more detail, and why it’s significant?

Michael:

- Sure. Well to start with, the DOJ has Department-level standards for all Justice Law Enforcement Agencies, including the DEA. These standards cover the establishment, approval, use, and evaluation of confidential sources. They are called the “AG Guidelines.”
- Instead of adopting these AG Guidelines, the DEA chose instead to incorporate certain provisions from the Guidelines into its own preexisting policy, called the DEA Special Agents Manual.

Rob:

- Right, and I saw in the report that the DEA’s policy was approved by the DOJ’s Criminal Division in 2004. So why was this a problem then?

Michael:

- You’re right, the Department did approve the DEA’s policy, and DEA said that its manual captured the essence of the AG Guidelines.
- However, the problem our audit team found was that DEA’s policy actually differs in several significant respects from the requirements in the Attorney General’s Guidelines.
- We found that the DEA’s Confidential Source Program lacks sufficient oversight, and it lacks consistency with the rules governing other DOJ law enforcement components.
- Let me give you 3 examples.
- First, DEA’s different policies allow high-risk individuals to be used as confidential sources without the same level of review that the Department requires for high-risk sources -- such as sources who may have information obtained through confidential, privileged relationships or people who are affiliated with the media.

Rob:

- And these “high-risk and privileged or media-affiliated sources” are confidential sources who can pose an increased risk to the public and who can have unique legal implications for DOJ?

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- These include individuals who are part of drug trafficking organization leadership, as well as lawyers, doctors, or journalists, right?

Michael:

- That's right. And what you have now is, the AG Guidelines require that each Justice Law Enforcement Agency establish an oversight committee, called a Confidential Informant Review Committee.
- This committee is then tasked with reviewing how these high-level, privileged, or media-related confidential informants are registered and used.

Rob:

- And the report states that the DEA had identified its Sensitive Activity Review Committee, or SARC, as its "established committee" for conducting these responsibilities.

Michael:

- That's right. But unlike the requirements in the AG Guidelines, the DEA policy does not require the SARC to review how high-level or privileged confidential sources are registered or used.
- So the DEA's SARC committee does not actually do these reviews. That's obviously the problem.

Rob:

- Was that the only area where the report identifies the DEA's policy as differing from the AG Guidelines?

Michael:

- No, and that brings me to our second example.
- Confidential sources are sometimes authorized to engage in activity that would be illegal if they were not acting under the direction of the federal government. That's what's called, "Otherwise Illegal Activity."
- One hypothetical example of Otherwise Illegal Activity could be if the DEA is trying to find the leader of a drug ring. The DEA might then allow a confidential source to buy and sell drugs, in an effort to find out who is directing the drug sales.

Rob:

- Well, that makes sense. So what's the issue with DEA's policy on "Otherwise Illegal Activity"?

Michael:

- The issue is, there are clear risks with these activities. So what the AG Guidelines do, is they provide clear requirements for reviewing, approving, and revoking a confidential source's authorization to conduct Otherwise Illegal Activity.

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- However, we found that the DEA’s policies and practices were not in line with those requirements.
- That, too, is a concern. Inadequate oversight in this area could prove detrimental to DEA: It could jeopardize the success of its operations and expose DEA to unnecessary liability.
- And it could also create unforeseen consequences. For example, if a confidential source perhaps oversteps his or her boundaries, with a mistaken belief that the DEA sanctions any illegal activities in which the source participates.

Rob:

- Let’s move now to the issue of DEA’s long –term confidential sources.
- The report describes how the AG Guidelines require the DEA to evaluate the continued use of confidential sources who have been in use for 6 or more consecutive years. And the report states that DEA’s own policy is consistent with that.
- But, contrary to its own policy, the DEA did not always review its continued use of long-term confidential sources, and when it did, the reviews were neither timely nor rigorous.

Michael:

- You’re right, Rob. This is the third example of how DEA’s confidential source policies are inconsistent with the Department’s guidance.
- These reviews are important because of the significant risk that an improper relationship between government handlers and sources could be allowed to continue over many years.
- Yet we found that from 2003 to 2012, the DEA committee charged with reviewing these long-term sources considered each source for an average of just 1 minute each. And that’s when there was any review at all.

Rob:

- Okay, so the audit found concerns with oversight of high-risk sources, “otherwise illegal activity” by sources, and oversight of long-term sources.
- I also see in the report a finding about tax dollars – specifically, how tax dollars have been used to provide death and disability benefits for confidential sources, under a law called the Federal Employees’ Compensation Act, or FECA.

Michael:

- That’s correct.
- The report describes how the DEA provided FECA, or death or disability benefits for confidential sources without any process in place, for reviewing the claims and determining the eligibility for these benefits.
- Moreover, it’s unclear if confidential sources qualify as federal employees, and in turn whether they qualify for any FECA benefits. And, we found that DEA was in some cases inappropriately

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continuing to use and pay confidential sources, who were at the same time receiving full disability benefits through FECA.

Rob:

- Does the report give an idea of how much the DEA spent on FECA benefits for confidential sources?

Michael:

- We estimated that, in the one-year period from July 2013 through the end of June 2014, the DEA paid a little over one million dollars in FECA benefits to 17 confidential sources or their dependents.

Rob:

- Well clearly a lot of important findings in the report. The report also talks about the process that the OIG had to go through in order to conduct the review.
- And in the report, it says that DEA was “uncooperative” about providing information to the OIG team.
- What happened?

Michael:

- Well, when we, Rob, conduct our work, we require components to give us complete and timely access to information about the program that we’re reviewing.
- We just did not get that kind of access here from the DEA and, as a result, our work on this audit was seriously delayed.
- For example, the DEA attempted to prohibit our observation of confidential source file reviews. And, our requests for documents from DEA were delayed, sometimes for months at a time.
- Each time, the matters were resolved only after I personally elevated them to the level of the DEA Administrator.
- These kinds of issues are just unacceptable. We are entitled to access these materials under the Inspector General Act. And that’s because without unfettered access to information, we simply can’t do the work that the Department, the Congress, and the American taxpayers expect and require of us, and problems such as the ones described in today’s report are more likely to continue unfixed for lengthy periods of time – if we even discover them at all, without that kind of access to information.
- I’m hopeful that these issues with the DEA are now behind us, but you can rest assured if they’re not, we will address them, and we will report on them.

Rob:

- Absolutely.

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- So that’s a summary of the report that was released today. For listeners who’d like more detail, the full report is now available on the OIG’s website – oig.justice.gov – under the “Reports” section.
- Michael, thank you for taking the time to sit down today to talk about the OIG’s release of its report on the DEA’s management of its Confidential Source Program.

Michael:

Thank you, Rob, and thank you to everybody who listened today.